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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

IN RE APPLICATION OF: William T. Ball
SERIAL NO.: 10/675,351
TITLE: PIPE COUPLING FOR JOINING PIPES OF
VARYING DIAMETERS
FILED: September 30, 2003
GROUP/A.U.: 3679
Confirmation No.: 5782
EXAMINER: Eric K. Nicholson

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

This is an appeal from the final rejection of claims
and 5-7 dated October 24, 2005.

I. Real Party In Interest:

The real party in interest of the instant appeal is WCM
Industries, Inc., a Colorado Corporation, having an address
of 2121 Waynoka Road, Colorado Springs, Colorado 80915.

II. Related Appeals and Interferences:

There are no related appeals or interferences.

CERTIFICATE OF MAILING (37 C.F.R. § 1.8(A))

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III. Status of the Claims:

Presently, claims 1-3 and 5-7 are pending in this application and appear in Appendix A of this brief.

IV. Status of Amendments:

Since the final rejection, no amendments after final have been made and the claims have not been changed.

V. Summary of Claimed Subject Matter:

Claim 1 is for a pipe coupling 10 for joining a first pipe to pipes of varying diameters. The pipe coupling 10 has a first hollow fitting 12 having opposite first and second ends 14 and 16 with a first end 14 being adapted for connection to a first pipe. (Page 2, lines 31-34). The first hollow fitting 12 additionally has a sleeve 40 with a typically inwardly crimped detent 42. (Page 3, lines 12-24).

The pipe coupling 10 also has a second hollow fitting 18 having first and second ends 20 and 22. (Page 2, lines 31-34). The second end 22 has a groove 44 for receiving the detent 42 of the first hollow fitting 12 to define a fluid conduit extending through interiors of the first and second hollow fittings 12 and 18. (Page 3, line 25-Page 4, line 18).

The second hollow fitting 18 has first and second adjacent wells 30 and 34. (Page 3, lines 7-11). The first well 30 is adjacent to the second end 22 of the second fitting 18 and has an upper end terminating in the first well 30, with both the first and second wells comprising at least a part of the fluid conduit. (Col. 3, lines 7-11).

The first and second wells 30 and 34 are cylindrical in shape with the second well having a diameter greater than the diameter of the first well. (Page 3, lines 7-11). The first and second wells are such that inlet pipes 68, 70 having outside diameters complimentary in size to the diameters of the wells can be selectively and alternatively secured within the respective wells to fluidly connect such pipes to the fluid conduit and the first hollow fitting 12. (Page 4, lines 5-18).

Claim 2 has the limitation of first and second wells 30 and 34 having side walls adaptable for being fixedly secured to the inlet pipes 68 and 70. (Col. 4, lines 5-18). Claim 3 adds "wherein the first hollow fitting 12 is comprised of metal and the second hollow fitting 18 is comprised of plastic". (Page 4, lines 9-18).

Independent claim 5 is similar to claim 1 except for it eliminates the limitation of the detent and groove. Instead claim 5 adds the limitation of the second hollow fitting 18 having first and second ends 20 and 22 with the second end 22 fitting slidably within the second end 16 of the first hollow fitting 12 in sealed condition to define a fluid conduit extending through interiors of the first and second hollow fittings 12 and 18. (Page 3, lines 25-34).

Independent claim 5 additionally adds the limitation of "wherein one of the wells is adapted to secure a pressurized fluid supply pipe therein". (Page 4, lines 14-17).

Dependent claim 6 adds the limitation of the first hollow fitting 12 having a means 26 on its first end 14 for coupling to a first pipe. (Page 2, line 34 - Page 3, line 6). Claim 7 adds the limitation of a well being adapted to adhesively

secure to a pressurized fluid supply therein. (Page 4, lines 9-18).

The claims do not teach a threaded connection between the first and second hollow fittings. The claims also do not teach wells that contain threaded members for connection with pipes. In fact no threadable connection is taught by the claims.

VI. Grounds of Rejection to Be Revealed on Appeal:

The Examiner has rejected claims 1-3, 5 and 6 under 35 U.S.C. § 102(b) as being anticipated by Oliver (U.S. Pat. No. 4,266,813). Claims 1-3 and 5-7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Taylor (U.S. Pat. No. 3,612,584) in view of Weir III (U.S. Pat. No. 4,712,812).

VII. Argument:

A. Description of the Prior Art

Oliver (U.S. Pat. No. 4,266,813).

Oliver discloses a generally funnel shaped body 10 attached to a long flexible tube 12. (Col. 1, lines 64-66). The body 10 has three internal threads 24, 26, and 28 of decreasing diameter. (Col. 1, lines 10-12). The body 10 also has a threaded portion 18 sized to accept a female hose fitting 20 and hose 22. (Col. 2, lines 5-9). The body 10 also shows an annular ridge 16 formed on the portion 14 to provide a tight snap fit with tube 12. The tube 12 may be made of a deformable and flexible plastic such as polyethylene or polypropylene. (Col. 1, line 68 - Col. 2, line 4).

Taylor (U.S. Patent No. 3,612,584).

Taylor teaches a plastic male connector 16 of generally cylindrical shape having a hexagonally shaped end portion 32 adapted to receive a tightening tool such as a wrench. (Col. 2, lines 41-43). A pipe 12 is threaded into bore 26 that is adapted to receive in locking engagement a corresponding threaded portion at 30 formed on the outer peripheral surface of male connector 16. (Col. 2, lines 36-40). Additionally the male connector 16 is secured to a pipe within male connector bore 36 by adhesive. (Col. 2, lines 47-50).

Weir, III (U.S. Patent No. 4,712,812).

Weir III teaches a connector fitting as illustrated by reference numeral 34 and characterized by a pair of connector ports 35 wherein each port 37, 39 and 41 have a different diameter. (Col. 5, lines 33-53). Weir III also teaches a connecting nut 80 that is provided with internal nut threads 81 which are designed to engage the first run flange 73 and second run flange thread 79 and join the first run flange 72 of the first run 65 to the second run flange 78 of the second run 74. (Col. 6, line 68 - Col. 7, line 5).

B. Argument In Support of Reversal

1. Rejection under 35 U.S.C. § 102

Claims 1-3 and 5-7. Claims 1-3, 5 and 6 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Oliver. Anticipation "requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee." Hoover Group, Inc. v. Custom Metalcraft, Inc., 66 F.3d 299, 302, 36 U.S.P.Q.2d 1101, 1103 (Fed. Cir. 1995). "[P]rior knowledge by others requires that all of the

elements and limitations of the claimed subject matter must be expressly or inherently described in a single prior art reference." Elan Pharms., Inc. v. Mayo Foundation for Medical Educ. & Research, 304 F.2d 1221, 1227, 64 U.S.P.Q.2d 1292 (Fed. Cir. 2002) (citing In re Robertson, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950 (Fed. Cir. 1999); Constant v. Advanced Micro-Devices, Inc., 848 F.2d 1560, 1571 7 U.S.P.Q.2d 1057, 1064 (Fed. Cir. 1988)). "The single reference must describe and enable the claimed invention, including all claim limitations, with sufficient clarity and detail to establish that the subject matter already existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention." Id. (citing Crown Operations Int'l, Ltd. v. Solutia Inc., 289 F.3d 1367, 1375, 62 U.S.P.Q.2d 1917, 1921 (Fed. Cir. 2002); In re Spada, 911 F.2d 705, 708 15 U.S.P.Q.2d 1655, 1657 (Fed. Cir. 1990)). See also PPG Indus., Inc. v. Guardian Indus. Corp., 75 F.3d 1558, 1566, 37 U.S.P.Q.2d 1618, 1624 (Fed. Cir. 1996) (emphasis added).

Independent claim 1 requires "a first hollow fitting having opposite first and second ends, with the first end being adapted for connection to a first pipe and having a sleeve with a typically inwardly crimped detent." The detent 42 is best seen in Fig. 3 and has a squared cross section that must snap into a corresponding groove 44 and does not twist or rotate to cause coupling. Additionally, the specification describes the detent 42 as "pushed into" the annular groove 44 to lock fittings 12 and 18 together. (Page 3 line 34-Page 4 line 9).

Oliver does not teach a detent as contemplated by the Applicant and instead, as suggested by the Examiner, Oliver

teaches a thread 18 of a second hollow fitting 10 that fits within the helical groove or female thread of a first hollow fitting 20. (Office action page 7). Applicant asserts that a thread cannot be considered a detent. As argued above, a detent must be pushed into place to cause coupling and not twisted or rotated like a thread. Additionally, the Applicant in the specification describes a threaded nipple portion 38 (Page 3 lines 12-13) and an assembled coupling that is "threadably inserted in the sleeve 66" (Page 4 lines 8-9). Thus, if the applicant intended claim a threadable connection or threads the applicant would have. However, the applicant choose not to claim a threadable connection or threads and instead claimed the very specific structure of a inwardly crimped detent. The Oliver device does not teach this typically inwardly crimped detent and thus this limitation of claim 1 is not met. Consequently, each and every limitation of the claimed invention is not provided by Oliver and the anticipation rejection must be withdrawn.

Claim 5 requires in part "a second hollow fitting having first and second ends with the second end fitting slidably within the second end of the first hollow fitting in sealed condition to define a fluid conduit extending through interiors of the first and second hollow fittings." According to the Examiner, the action of male threads sliding past female threads causes Oliver to meet this limitation. The Applicant respectfully disagrees. The claimed limitation requires that the second end fitting be slidably within the second end of the first hollow fitting. Applicant asserts that male threads sliding past female threads does not cause the second end fitting to be slidably fitted within the first hollow fitting, it instead causes the male threads to be

slidably fitted within the female threads. Thus, this limitation is not taught within Oliver.

Additionally, within the specification, the Applicant has distinguished between a slidable fitting and a threadable fitting. Specifically, Applicant discloses the fitting connection where fitting 18 is slidably inserted into the large diameter sleeve 40 after sealant 56 has been placed in the area of annular groove 44. (Page 3, lines 30-33). In contrast, the Applicant describes a threadable connection where "the assembled coupling can then be threadably inserted into the sleeve 66 of hydrant 58 as best shown in Fig. 5." (Page 4, lines 8-9). Thus, the Applicant has distinguished between a connection where a second end fitting is slidably inserted within an end of the first hollow fitting as compared with a coupling being threadably inserted into a sleeve. Thus, the Examiner's claim that the threadable connection of Oliver meets the "slidable" claim limitation is not consistent with the written description. Therefore, the Oliver device does not teach a second hollow fitting having an end fitting slidably within a first hollow fitting and therefore, this claim limitation is not met. Consequently, each and every limitation of the claimed invention is not present and the anticipation rejection must be withdrawn.

2. Rejection under 35 U.S.C. § 103.

Claims 1-3 and 5-7. Claims 1-3 and 5-7 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Taylor in view of Weir, III. An obviousness analysis begins in the text of section 103 with the phrase "at the time the invention was made." For it is this phrase that guards against entry into the "tempting but forbidden zone of

hindsight when analyzing the patentability of claims pursuant to that section. See Loctite Corp. v. Ultraseal Ltd., 781 F.2d 861, 873, 228 USPQ 90, 98 (Fed. Cir. 1985), overruled on other grounds by Nobelpharma AB v. Implant Innovations, Inc., 141 F.3d 1059, 46 USPQ 2d 1097 (Fed. Cir. 1998). Measuring a claimed invention against the standard established requires the often difficult but critical step of casting the mind back to the time of the invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and then-accepted wisdom in the field. See, e.g. W.L. Gore & Assoc., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 313 (Fed. Cir. 1983). Close adherence to this methodology is especially important in the case of less technologically complex inventions, where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against the teacher." Id.

The best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. See, e.g., C.R. Bard, Inc. v. M3 Sys., Inc., 157 F.3d 1340, 1352, 48 USPQ 2d 1225, 1232 (Fed. Cir. 1998) (describing "teaching or suggestion or motivation [to combine] as an essential evidentiary component of an obviousness holding") combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability - the essence of hindsight. See, e.g. Interconnect Planning Corp. v Feil, 774 F.2d 1132, 1138,

277 USPQ 543, 547 (Fed. Cir. 1985) ("The invention must be viewed not with the blueprint drawn by the inventor, but in the state of the art that existed at the time.") In this case, the Examiner has fallen into the hindsight trap.

Evidence of a suggestion, teaching or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem solved, although the suggestion more often comes from the teachings of the pertinent references. Rouffet, 149 F.3d at 1355. The range of sources available does not diminish the requirement for actual evidence. That showing must be clear and particular. See, e.g., C.R. Bard, 157 F.3d at 1352. Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. e.g., McElmurry v. Arkansas Power & Light Co., 995 F.2d 1576, 1578, 27 USPQ 2d 1129, 1131 (Fed. Cir. 1993) ("Mere denials and conclusory statement, however, are not sufficient to establish a genuine issue of material fact.").

The obvious rejection asserted by the Examiner is based on a combination of prior art references, e.g. The Metal and Plastic Coupling device of Taylor combined with the wells of varying size seen in Weir III for receiving pipes of various diameters. Rather than pointing to specific information in Weir III or Taylor that suggests the combination, the Examiner described the general functions of a metal or plastic coupling device and multi wellled coupling device. Nowhere does the Examiner particularly identify any suggestion, teaching, or motivation to combine the prior art references such as the identification of the relevant art, the level of ordinary skill in the art, the nature of the

problem to be solved, or any other facts or findings that might serve to support a proper obviousness analysis. (See ProMold & Tool, 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996)).

To the contrary, the Examiner's decision is based on a discussion of the ways the multiple prior art references can be combined to read on the claimed invention. (Office Action, Page 5). Yet this reference by reference, limitation by limitation analysis fails to demonstrate how the Weir III reference teaches or suggests its combination with Taylor to yield the claimed invention.

Even if there is no motivation to combine the prior art references the combination of Taylor and Weir III will not result in the invention as claimed. The teachings or suggestions to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicant's disclosure. See In re Vacck, 997 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); MPEP § 2143. To establish a *prima facie* case of obviousness, all the claim limitations must be taught by the prior art. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 57 C.C.P.A. 1029, 1032 (1970).

The Taylor and Weir references both show connections using threads, e.g., threads 19 shown in Taylor and threads 81, 67 and 69 taught in Weir III. Thus, these references teach connections identical to Oliver and neither reference teaches a typically inward crimped detent as required in claim 1 nor a second hollow fitting having an end fitting slidably within a first hollow fitting as is required by

independent claim 5. Therefore, each and every limitation of independent claims 1 and 5 are not met by the combination of Weir and Taylor and the obviousness rejection must be withdrawn. Consequently, independent claims 1 and 5 are considered in allowable form. Claim 2, 3 and 6 depend on claim 1 while dependent claim 7 depends on claim 5 and for at least this reason each of the dependent claims are considered in allowable form.

VIII. Conclusion

Applicant asserts claims 1-3 and 5-7 are allowable subject matter and respectfully requests the Board overturn the Examiner's decision.

A check in the amount of \$250 has been included with this appeal brief. All fees or extensions of time believed to be due in connection with this response are attached hereto; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,



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- JLH/jlk -
Attachment: Appendix A

APPENDIX A

VIII. Claims Appendix:

1. (previously presented): A pipe coupling for joining a first pipe to pipes of varying diameters, comprising,
a first hollow fitting having opposite first and second ends,
with the first end being adapted for connection to a first pipe and having a sleeve with a typically inwardly crimped detent,
a second hollow fitting having first and second ends with the second end having a groove for receiving the detent of the first hollow fitting to define a fluid conduit extending through interiors of the first and second hollow fittings,
first and second adjacent wells in the second hollow fitting, with the first well being adjacent the second end of the second fitting and having an upper end terminating in the first well, with both the first and second wells comprising at least a part of the fluid conduit,
the first and second wells being cylindrical in shape with the second well having a diameter greater than the diameter of the first well, whereupon inlet pipes having outside diameters complimentary in size to the diameters of the wells can be selectively and alternately secured within the respective wells to fluidly connect such pipes to the fluid conduit and the first hollow fitting.
2. (previously presented): The pipe coupling of claim 1 wherein the first and second wells have side walls adaptable for being fixedly secured to the inlet pipes.

3. (previously presented): The pipe coupling of claim 1 wherein the first hollow fitting is comprised of metal and the second hollow fitting is comprised of plastic.

4. (cancelled).

5. (previously presented): A pipe coupling for joining a first pipe to pipes of varying diameters, comprising, a first hollow fitting having opposite first and second ends, with the first end being adapted for connection to a first pipe, a second hollow fitting having first and second ends with the second end fitting slidably within the second end of the first hollow fitting in sealed condition to define a fluid conduit extending through interiors of the first and second hollow fittings, first and second adjacent wells in the second hollow fitting, with the first well being adjacent the second end of the second fitting and having an upper end terminating in the first well, with both the first and second wells comprising at least a part of the fluid conduit, the first and second wells being cylindrical in shape with the second well having a diameter greater than the diameter of the first well, whereupon inlet pipes having outside diameters complimentary in size to the diameters of the wells can be selectively and alternately secured within the respective wells to fluidly connect such pipes to the fluid conduit and the first hollow fitting; and wherein one of the wells is adapted to secure a pressurized fluid supply pipe therein.

6. (previously presented): The coupling of claim 1 wherein the first hollow fitting has means on its first end for coupling to a first pipe.

7. (previously presented) The coupling of claim 5 wherein a well is adapted to adhesively secure a pressurized fluid supply therein.

IX. Evidence Appendix

None.

X. Related Proceedings Appendix

None.